

**BEFORE THE INVESTIGATIVE PANEL OF THE
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA**

INQUIRY CONCERNING A JUDGE,
HON. RALPH E. ERIKSSON,
CASE NO. 07-64

SC CASE NO. 07-1648

MOTION TO STRIKE MOTION FOR SUMMARY JUDGMENT

Comes now the Florida Judicial Qualifications Commission and moves that the respondent judge's Motion for Summary Judgment be stricken, and for cause would show:

1. Proceedings before the Florida Judicial Qualifications Commission are governed by the Florida Judicial Qualifications Commission Rules (FJQCR). Article V, Section 12(a)(4), Florida Constitution.
2. Rule 12(b), FJQCR provides, "In all proceedings before the Hearing Panel, the Florida Rules of Civil Procedure shall be applicable *except where inappropriate* or as otherwise provided by these rules." (e.s.)
3. Rule 7(b), FJQCR provides, "The Chair of the Hearing Panel shall dispose of all pretrial motions. These motions may be heard by teleconference or be determined with or without hearings. The Chair's

disposition of motions shall be subject to review by the full Hearing Panel.”

4. These procedural rules, and the policy and practice that have grown from them, make the use of a motion for summary judgment particularly inappropriate in the context of Judicial Qualifications Commission proceedings.

Rule 1.510, Florida Rules of Civil Procedure (FRCP), provides that either the claimant or the defending party may seek summary judgment. A summary judgment motion seeks a final determination of a complaint based upon the pleadings and “summary judgment evidence.” If those materials and the pleadings establish that no genuine issue as to any material fact exists, then the moving party is entitled to a judgment as a matter of law.

5. Summary judgment has never been attempted in Judicial Qualifications Commission proceedings. Since Rule 7(b) FJQCR requires all motions to be ultimately decided by the Hearing Panel as a body, summary judgment is a process fundamentally inconsistent with Commission procedures.

The conflict between the Rules of Civil Procedure and the Commission Rules is highlighted when considering the purpose of a

motion for summary judgment. It is a legal mechanism designed to avoid submitting groundless complaints to a jury. This process makes no sense compared to the Commission's procedures. In order for formal charges to be filed against a judge, as in the present case, the actions of the judge and the circumstances surrounding the judge's actions have already been submitted to the Investigative Panel of the Commission. And in order for formal charges to have been filed, the Investigative Panel must have found probable cause to believe that a factual basis for the charges exists. Rule 6(f) FJQCR. Probable cause exists when the facts and circumstances establish a reasonable belief an offense has been committed. Jenkins v. State, 978 So.2d 116 (Fla. 2008). By the finding of probable cause, the Investigative Panel has obviated the summary judgment procedure.

6. The fact that Rule 1.510, FRCP, makes summary judgment a reciprocal remedy further renders the rule inapplicable. If it were not so, the Commission could summarily convict judges of unethical practices. So by the very terms of Rule 1.510, FRCP, the rule is inapplicable to Commission proceedings. The Supreme Court has recognized in other cases where the Rules of Civil Procedure have been found not to be applicable. In re Graziano, 696 So.2d 744, 752 (Fla. 1997).

7. As a corollary to this concept, fact issues relating to state of mind are particularly unsuited to a summary judgment. Whether a judge's actions constitute a violation of the Code of Judicial Conduct is usually an evaluation of motive, intent, and state of mind. A motion for summary judgment cannot properly examine whether discretion was exercised with improper motives or with malicious intent. Such a procedure cannot divine whether a decision, that may fall within the letter of the law, can still be unethical in its exercise. It cannot gauge how the complained of conduct erodes the public confidence by the improper wielding of judicial power. Where motivation is at issue, whether the action was taken with malice or legitimate interest is not susceptible to disposition on summary judgment. Lore v. Barr, 771 So.2d 589 (Fla. 1st DCA 2000). In cases of fraud, which turn on the circumstances surrounding a transaction, including evidence of intent and knowledge, summary judgment is rarely proper. Cohen v. Kravitz, 843 So.2d 989 (Fla. 4th DCA 2003).

It is inappropriate to adjudicate the actions of a judge in a summary proceeding when the preamble to the Code of Judicial Conduct sets forth that, "Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a

reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgressions, whether this is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.”

Wherefore, based upon the foregoing, the Commission requests that the Motion for Summary Judgment be stricken.

Respectfully Submitted,

JUDICIAL QUALIFICATIONS COMMISSION

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by US mail to Chandler R. Muller, Esq., Counsel to Hon. Ralph E. Eriksson, Muller & Sommerville, P.A., 1150 Louisiana Avenue, Ste. 2, Winter Park, FL 32789, Hon. Thomas B. Freeman, Chairman, Hearing Panel, Criminal Justice Center, 14250 49th Street North, Clearwater, FL 33762-2801, and John R.

Beranek, Esq., Counsel to Hearing Panel, PO Box 391, Tallahassee, FL 32302, this
7th day of November, 2008.

Michael L. Schneider
General Counsel